

**CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
CALIFORNIA EMERGENCY PHYSICIANS**

I. PREAMBLE

California Emergency Physicians ("CEP") hereby enters into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to promote compliance with the statutes, regulations and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) ("Federal health care program requirements") at CEP's Pomona Valley Hospital Medical Center ("PVHMC") location by CEP, CEP's subsidiaries, officers, directors, employees, physicians,¹ partners, billing contractors and agents (to the extent CEP can secure their cooperation)², and leased coding personnel from Med-America, Inc. ("Med-America"), who are responsible for: (a) the provision or documentation of items or services at PVHMC that are reimbursable by Federal health care programs; (b) the preparation of claims, or supporting documentation for such items or services rendered at PVHMC; (c) management or oversight of medical record documentation or claims preparation or submission at PVHMC; (d) creating billing and coding policies and procedures for CEP at the PVHMC location;³ and (e) carrying out the duties of this CIA ("Covered Persons").

¹The term "physicians" does not include physicians who have served less than five (5) shifts at PVHMC.

²CEP shall make all reasonable efforts to secure the cooperation of all billing contractors and agents. If a new contract is entered into during the term of this CIA, CEP shall include in that contract a provision that requires such personnel to comply with the requirements of this CIA.

³It is agreed that, at the effective date of this Agreement, the partners at CEP who are covered by (c) and (d) are the physicians at PVHMC, the Regional Director, the Chief Operating Officer and the President of CEP. CEP shall notify the OIG within fifteen (15)

Contemporaneously with this CIA, CEP is entering into a Settlement Agreement with the United States, and this CIA is incorporated by reference into the Settlement Agreement.

II. TERM OF THE CIA

The period of the compliance obligations assumed by CEP under this CIA shall be three (3) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA shall be the date on which the final signatory of this CIA executes this CIA.

Sections VII, VIII, IX, X and XI shall remain in effect until CEP submits all information required by OIG as part of the final Annual Report.

III. CORPORATE INTEGRITY OBLIGATIONS

CEP hereby agrees to establish a Compliance Program for its operations at PVHMC that includes the following elements (which may be fulfilled by CEP's existing Compliance Program to the extent that these requirements are met by that Program):

A. Compliance Director and Committee.

1. *Compliance Director.* CEP shall continue to have an individual who serves as its Compliance Director. The Compliance Director shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance at PVHMC with the requirements set forth in this CIA and with Federal health care program requirements. The Compliance Director shall be a member of senior management of CEP, shall make periodic (at least quarterly) reports regarding compliance matters at PVHMC directly to the President and to the Board of Directors of CEP, and shall be authorized to report on such matters to the Board of Directors at any time. The Compliance Director shall be responsible for monitoring the day-to-day compliance activities engaged in by CEP at PVHMC as well as for any reporting obligations created under this CIA.

days of any material change from the current structure and responsibilities.

Any changes in the identity or position description of the Compliance Director, or any actions or changes that would affect the Compliance Director's ability to perform the duties necessary to meet the obligations in this CIA, must be reported to OIG, in writing, within fifteen (15) days of such a change.

2. *Compliance Committee.* To the extent that it has not already done so, within ninety (90) days of the effective date of this CIA, CEP shall appoint a Compliance Committee with authority over operations at PVHMC. The Compliance Committee shall, at a minimum, include the Compliance Director, the Regional Medical Director for the Region responsible for PVHMC and other members of senior management necessary to meet the requirements of this CIA (e.g., individuals who have the expertise and authority to respond to issues concerning compliance and proper billing to the Federal health care programs, including, but not limited to, instituting and enforcing corrective action plans). The Compliance Committee shall be chaired by an appropriate partner of CEP and the Committee shall support the Compliance Director in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the organization's risk areas and shall oversee monitoring of internal and external audits and investigations).

Any changes in the composition of the Compliance Committee, or any actions or changes that would affect the Compliance Committee's ability to perform the duties necessary to meet the obligations in this CIA, must be reported to OIG, in writing, within fifteen (15) days of such a change.

B. Written Standards.

1. *Code of Conduct.* CEP has established a Code of Conduct. CEP shall analyze the Code of Conduct to ensure that it meets the requirements set forth below. To the extent that it has not already done so, the Code of Conduct and any amendments required shall be distributed to all Covered Persons. This analysis and distribution, if any is required because the existing Code of Conduct does not meet the requirements listed below, shall be completed within ninety (90) days of the effective date of this CIA. CEP shall continue to make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. CEP's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;

- b. CEP's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with CEP's own Policies and Procedures as implemented pursuant to section III.B (including the requirements of this CIA);
- c. the requirement that all of CEP's Covered Persons shall be expected to report to the Compliance Director or other individual designated by CEP suspected violations of any Federal health care program requirements or of CEP's own Policies and Procedures;
- d. the possible consequences to both CEP and Covered Persons of failure to comply with all Federal health care program requirements and with CEP's own Policies and Procedures or of failure to report such non-compliance; and
- e. the right of all individuals to use the Confidential Disclosure Program described in section III.E, and CEP's commitment to maintain confidentiality, as appropriate, and non-retaliation with respect to disclosures.

To the extent that this has not already occurred within the past ninety (90) days, within ninety (90) days of the effective date of the CIA, each Covered Person shall certify, in writing, that he or she has received, read, understood, and will abide by CEP's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within ten (10) days after becoming a Covered Person or within ninety (90) days of the effective date of the CIA, whichever is later.

CEP shall annually review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such a review. Any such revised Code of Conduct shall be distributed within thirty (30) days of finalizing such changes. Covered Persons shall certify that they have received, read, understood and will abide by the revised Code of Conduct within thirty (30) days of the finalization of such revisions.

2. *Policies and Procedures.* To the extent that CEP has not already done so, within ninety (90) days of the effective date of this CIA, CEP shall implement written Policies and Procedures regarding the operation of CEP's compliance program and its

compliance with Federal health care program requirements for its operations at PVHMC. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the Code of Conduct identified in section III.B.1;
- b. the proper coding and documentation requirements for emergency room physicians.

The Policies and Procedures shall be available to OIG, upon request.

To the extent CEP has not already done so within the past ninety (90) days, within ninety (90) days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be Covered Persons whose job functions are related to those Policies and Procedures. Appropriate and knowledgeable staff should be available to explain the Policies and Procedures.

At least annually (and more frequently if appropriate), CEP shall assess and update as necessary the Policies and Procedures. Within thirty (30) days of the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all Covered Persons whose job functions are related to those Policies and Procedures.

C. Training and Education.

1. *General Training.* Within ninety (90) days of the effective date of this CIA, CEP shall provide at least two hours of general training to each Covered Person. This training shall explain CEP's:

- a. CIA requirements; and
- b. Compliance Program (including the Code of Conduct and the Policies and Procedures as they pertain to general compliance issues).

All training materials shall be made available to OIG, upon request.

New Covered Persons shall receive the general training described above within thirty (30) days of becoming a Covered Person or within ninety (90) days after the effective date of this CIA, whichever is later. After receiving the initial training described above, each Covered Person shall receive at least one (1) hour of general training annually.

2. *Specific Training.* Within ninety (90) days of the effective date of this CIA, each Covered Person shall receive at least five (5) hours of specific training in addition to the general training required above. This specific training shall include a discussion of:

- a. the submission of accurate bills for services rendered to Federal health care program patients, including, but not limited to, the proper application of the relevant Current Procedural Terminology ("CPT") Codes;
- b. policies, procedures and other requirements applicable to the documentation of medical records;
- c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;
- d. applicable reimbursement statutes, regulations, and program requirements and directives;
- e. the legal sanctions for improper billings; and
- f. examples of proper and improper billing practices.

All training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Covered Persons shall receive this training within thirty (30) days of the beginning of their employment or becoming Covered Persons or within ninety (90) days of the effective date of this CIA, whichever is later. A CEP employee or contracted coder who has completed the specific training shall review a new Covered Person's work, to the extent that the work relates to the delivery of patient care items or services and/or in the

preparation or submission of claims for reimbursement from any Federal health care program, until such time as the new Covered Person completes applicable training.

After receiving the initial training described in this section, every Relevant Covered Person shall receive at least three (3) hours of specific training annually.

3. *Certification.* Each individual who is required to attend training shall certify, in writing, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Director (or his or her designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

D. Review Procedures.

CEP shall retain an entity, such as an accounting, auditing, law, or consulting firm (hereinafter "Independent Review Organization"), to perform review procedures to assist CEP in assessing the adequacy of its billing at PVHMC and compliance practices pursuant to this CIA. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization performing the billing review function must have expertise in billing, coding, reporting, and other requirements of the Federal health care programs from which CEP seeks reimbursement. The Independent Review Organization must be retained to conduct the audit of the first year within ninety (90) days of the effective date of this CIA.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of CEP's billing for items and services rendered at PVHMC to the Federal health care programs to assist CEP and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("billing engagement"). The second engagement will determine whether CEP is in compliance with this CIA ("compliance engagement"). These functions may be undertaken by separate Independent Review Organizations.

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of claims from PVHMC that can be projected to the population of claims for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be within a ninety (90) percent confidence level and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full

sample. Both the probe sample and the sample must be selected through random numbers. CEP shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "www.hhs.gov/oas/ratstat.html."

Each annual billing engagement analysis shall include the following components in its methodology:

- a. **Billing Engagement Objective:** A statement stating clearly the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.
- b. **Billing Engagement Population:** Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.
- c. **Sources of Data:** Provide a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.
- d. **Sampling Unit:** Define the sampling unit, which is any of the designated elements that comprise the population of interest.
- e. **Sampling Frame:** Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected

The billing engagement shall provide:

- a. findings regarding CEP's billing and coding operation at PVHMC (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, and effectiveness of the system);

- b. findings regarding whether CEP is providing accurate information and submitting accurate claims for items and services rendered at PVHMC and billed to the Federal health care programs;
- c. findings regarding whether CEP physicians at PVHMC are properly documenting each medical record and that the documentation supports the CPT code billed;
- d. findings regarding CEP's procedures at PVHMC to correct inaccurate billings or codings to the Federal health care programs; and
- e. findings regarding the steps CEP is taking to bring its operations at PVHMC into compliance or to correct problems identified by the audit.

2. *Compliance Engagement.* An Independent Review Organization shall also conduct a compliance engagement, that shall provide findings regarding whether CEP's program, policies, procedures, and operations comply with the terms of this CIA. This engagement shall include section by section findings regarding the requirements of this CIA.

A complete copy of the original Independent Review Organization's billing and compliance engagement shall be included in each of CEP's Annual Reports to OIG.

3. *Verification/Validation.* In the event that the OIG determines that it is necessary to conduct an independent review to determine whether or the extent to which CEP is complying with its obligations under this CIA, CEP agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

E. Confidential Disclosure Program.

CEP shall continue to maintain a Confidential Disclosure Program, which must include a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Director or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with CEP's policies, practices, or procedures at PVHMC with respect to a Federal health care

program, believed by the individual to be a potential violation of criminal, civil, or administrative law. CEP shall publicize the existence of the confidential disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas) so that the personnel at PVHMC will be informed of its existence.

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communications. Upon receipt of a disclosure, the Compliance Director (or designee) shall gather all relevant information from the disclosing individual. The Compliance Director (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, CEP shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Director (or his or her designee) shall maintain a confidential disclosure log for disclosures involving the PVHMC operations, which shall include a record and summary of each disclosure received, the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The confidential disclosure log as it relates to PVHMC shall be available to OIG, upon request.

F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (a) is currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense related to the provision of health care items or services, but has not yet been excluded, debarred, or otherwise declared ineligible.

2. *Screening Requirements.* CEP shall not hire or engage as contractors any Ineligible Person at PVHMC. To prevent hiring or contracting with any Ineligible Person, CEP shall screen all prospective employees and prospective contractors prior to engaging their services by: (a) requiring applicants to disclose whether they are Ineligible

Persons; and (b) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.hhs.gov/oig>) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within ninety (90) days of the effective date of this CIA, CEP shall review its list of current employees and contractors at PVHMC, including its subsidiaries and affiliates, against the Exclusion Lists. Thereafter, CEP shall review the list semi-annually. In addition, CEP shall require employees and contractors to disclose immediately any debarment, exclusion, or other event that makes the employee an Ineligible Person.

If CEP has notice that an employee or contractor has become an Ineligible Person, CEP shall remove such person from responsibility for, or involvement with, CEP's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If CEP has notice that an employee or contractor at PVHMC is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, CEP shall take all appropriate actions to ensure that the responsibilities of that employee or contractor have not and shall not adversely affect the quality of care rendered to any beneficiary, patient or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within thirty (30) days of discovery, CEP shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that CEP has committed a crime or has engaged in fraudulent activities at PVHMC. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. CEP shall also provide written notice to OIG within

thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

1. *Overpayments*

a. Definition of Overpayments. For purposes of this CIA, an “overpayment” shall mean the amount of money CEP has received in excess of the amount due and payable under any Federal health care program requirements for services rendered at PVHMC. CEP may not subtract any underpayments for purposes of determining the amount of relevant “overpayments.”

b. Reporting of Overpayments. If, at any time, CEP identifies or learns of any overpayments, CEP shall notify the payor (e.g., Medicare fiscal intermediary or carrier) and repay any identified overpayments for services rendered at PVHMC within thirty (30) days of discovery and take remedial steps within sixty (60) days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. Notification and repayment to the contractor should be done in accordance with the contractor policies, and for Medicare contractors, must include the information contained on the Overpayment Refund Form, provided as Attachment 1 to this CIA.

2. *Material Deficiencies.*

a. Definition of Material Deficiency. For purposes of this CIA, a “Material Deficiency” means anything that involves:

(i) a substantial overpayment; or

(ii) a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Material Deficiency may be the result of an isolated event or a series of occurrences.

b. Reporting of Material Deficiencies. If CEP determines that there is a Material Deficiency in connection with its operations at PVHMC, CEP shall notify OIG, in writing, within thirty (30) days of making the determination that the Material Deficiency exists. The report to the OIG shall include the following information:

(i) if the Material Deficiency results in an overpayment, the report to the OIG shall be made at the same time as the notification to the payor required in section III.H.1, and shall include all of the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid/refunded;

(ii) a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

(iii) a description of CEP's actions taken to correct the Material Deficiency; and

(iv) any further steps CEP plans to take to address the Material Deficiency and prevent it from recurring.

IV. NEW BUSINESS UNITS OR LOCATIONS

In the event that, after the effective date of this CIA, any physician who works at PVHMC changes locations or purchases or establishes new business units related to the

furnishing of items or services that may be reimbursed by Federal health care programs, CEP shall notify OIG of this fact as soon as possible, but no later than within thirty (30) days of the date of when the physician leaves or changes location. This notification shall include the location of the new operation(s), phone number, fax number, Medicare provider number(s) (if any), and the corresponding contractor's name and address that has issued each Medicare provider number to the extent that CEP has this information.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one hundred and twenty (120) days after the effective date of this CIA, CEP shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Director required by section III.A;
2. the names and positions of the members of the Compliance Committee required by section III.A;
3. a copy of CEP's Code of Conduct required by section III.B.1;
4. the summary of the Policies and Procedures required by section III.B.2;
5. a description of the training required by section III.C, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;
6. a certification by the Compliance Director that:
 - a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all appropriate Covered Persons;
 - b. all Covered Persons have completed the Code of Conduct certification required by section III.B.1; and

- c. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C.;

The documentation supporting this certification shall be available to OIG, upon request.

7. a description of the Confidential Disclosure Program required by section III.E;
8. the identity of the Independent Review Organization(s) and the proposed start and completion dates of the first annual review;
9. a summary of personnel actions taken pursuant to section III.F.;
10. a list of all of CEP's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Medicare provider identification number(s) and the contractor's name and address that issued each provider identification number; and
11. to the extent not already furnished to OIG, or if modified, a description of CEP's organizational structure, including identification of any parent and sister companies, subsidiaries and their respective lines of business.

B. Annual Reports. CEP shall submit to OIG Annual Reports with respect to the status of and findings regarding of CEP's compliance activities for each of the three (3) one-year periods beginning on the effective date of the CIA. (The one-year period covered by each Annual Report shall be referred to as "the Reporting Period").

Each Annual Report shall include:

1. any change in the identity or position description of the Compliance Director and/or members of the Compliance Committee described in section III.A.;
2. a certification by the Compliance Director that:

- a. all Covered Persons have completed the annual Code of Conduct certification required by section III.B.1;
- b. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.C;
- c. CEP has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; and (ii) not to charge to or otherwise seek payment from Federal or state payors for unallowable costs (as defined in the Settlement Agreement) and to identify and adjust any past charges or claims for unallowable costs;

The documentation supporting this certification shall be available to OIG upon request.

- 3. a summary of any significant changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);
- 4. a description of the training required by section III.C conducted during the Reporting Period, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;
- 5. a complete copy of all reports prepared pursuant to the Independent Review Organization's billing and compliance engagements, including a copy of the methodology used, along with a copy of the Independent Review Organization's engagement letter;
- 6. CEP's response and corrective action plan(s) related to any issues raised by the Independent Review Organization(s);

7. a summary of Material Deficiencies (as defined in III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Material Deficiencies;
8. a report of the aggregate overpayments that have been returned to the Federal health care programs from PVHMC. Overpayment amounts should be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;
9. a summary of the disclosures in the confidential disclosure log required by section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;
10. a description of any personnel actions (other than hiring) taken by CEP as a result of the obligations in section III.F, and the name, title, and responsibilities of any person that falls within the ambit of section III.F.4, and the actions taken in response to the obligations set forth in that section;
11. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding; and
12. a description of all changes to the most recently provided list (as updated) of CEP's locations (including locations and mailing addresses) as required by section V.A.10, the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the contractor name and address that issued each provider identification number.

The first Annual Report shall be received by the OIG no later than one year and sixty (60) days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Director that: (1) except as otherwise described in the applicable report, CEP is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Director has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

D. Designation of Information. CEP shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. CEP shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing after the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

CEP:

Mr. Tom Powers
Compliance Officer
California Emergency Physicians, Inc.
2101 Webster Street, Suite 1770
Oakland, CA. 94612

Phone 510.832.6400

Fax 510.835.0317

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of CEP's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of CEP's locations for the purpose of verifying and evaluating: (a) CEP's compliance with the terms of this CIA; and (b) CEP's compliance at PVHMC with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by CEP to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of CEP's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. CEP agrees to assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. CEP's employees may elect to be interviewed with or without a representative of CEP present.

VIII. DOCUMENT AND RECORD RETENTION

CEP shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for four (4) years (or longer if otherwise required by law).

IX. DISCLOSURES

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, the OIG shall make a reasonable effort to notify CEP prior to any release by OIG of information submitted by CEP pursuant to its obligations under this CIA and identified upon submission by CEP as trade secrets, or information that is commercial or financial and

privileged or confidential, under the FOIA rules. With respect to such releases, CEP shall have the rights set forth at 45 C.F.R. § 5.65(d). CEP shall refrain from identifying any information as exempt from release if that information does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

CEP is expected to fully and timely comply with all of its CIA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, CEP and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as “Stipulated Penalties”) in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day CEP fails to have in place any of the following:

- a. a Compliance Director as described by section III.A.1;³
- b. a Compliance Committee as described by section III.A.2;
- c. a written Code of Conduct as described by section III.B.1;
- d. written Policies and Procedures as described by section III.B.2;
- e. a requirement that Covered Persons be trained as described in section III.C; and

³In the event that the Compliance Director leaves unexpectedly or is no longer serving in the capacity of Compliance Director, CEP shall: 1) appoint someone to temporarily act in the capacity of the Compliance Director; 2) provide the OIG with notice within 24 hours of learning of facts that would trigger this provision; and 3) make all reasonable efforts to obtain a replacement and advise the OIG of these efforts on a regular basis but no less than semi-monthly. If CEP meets the terms of this footnote, Stipulated Penalties will not be imposed during this time. This footnote does not alter CEP's requirement to have a Compliance Director in place at the time this CIA is implemented.

f. a Confidential Disclosure Program as described in section III.E.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day CEP fails to retain an Independent Review Organization, as required in section III.D.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day CEP fails to meet any of the deadlines for the submission of the Implementation Report or the Annual Reports to OIG.

4. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day CEP employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, CEP's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (the Stipulated Penalty described in this paragraph shall not be demanded for any time period during which CEP can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person).

5. A Stipulated Penalty of \$1,500 for each day CEP fails to grant access to the information or documentation as required in section VII of this CIA. (This Stipulated Penalty shall begin to accrue on the date CEP fails to grant access.)

6. A Stipulated Penalty of \$1,000 for each day CEP fails to comply fully and adequately with any obligation of this CIA not already covered in paragraphs 1-5. In its notice to CEP, OIG shall state the specific grounds for its determination that CEP has failed to comply fully and adequately with the CIA obligation(s) at issue and steps the CEP must take to comply with the CIA. (This Stipulated Penalty shall begin to accrue ten (10) days after the date that OIG provides notice to CEP of the failure to comply.)

B. Timely Written Requests for Extensions. CEP may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after CEP fails to meet the revised deadline

set by OIG. Notwithstanding any other provision in this section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after CEP receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that CEP has failed to comply with any of the obligations described in section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify CEP of: (a) CEP's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within ten (10) days of the receipt of the Demand Letter, CEP shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.E. In the event CEP elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until CEP cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as set forth in section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that CEP has materially breached this CIA, which decision shall be made at OIG's discretion and shall be governed by the provisions in section X.D, below.

D. Exclusion for Material Breach of this CIA

1. *Definition of Material Breach.* A material breach of this CIA means:

a. a failure by CEP to report a material deficiency, take corrective action and make the appropriate refunds, as required in section III.H;

b. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A;

c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section X.C; or

d. a failure to retain and use an Independent Review Organization in accordance with section III.D.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by CEP (including its physicians) constitutes an independent basis for CEP's exclusion from participation in the Federal health care programs. Upon a determination by OIG that CEP has materially breached this CIA and that exclusion should be imposed, OIG shall notify CEP of: (a) CEP's material breach, and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* CEP shall have thirty (30) days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

a. CEP is in full compliance with this CIA;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 30-day period, but that: (i) CEP has begun to take action to cure the material breach; (ii) CEP is pursuing such action with due diligence; and (iii) CEP has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If at the conclusion of the thirty (30) day period, CEP fails to satisfy the requirements of section X.D.3, OIG may exclude CEP from participation in the Federal health care programs. OIG will notify CEP in writing of its determination to exclude CEP (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.E, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, CEP wishes to apply for reinstatement, CEP must submit a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to CEP of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, CEP shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within ten (10) days of the receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within twenty five (25) days of receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether CEP was in full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (b) the period of noncompliance. CEP shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders CEP to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision unless CEP requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB

and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable twenty (20) days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be:

- a. whether CEP was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the thirty (30) day period, but that:
 - (i) CEP had begun to take action to cure the material breach within that period;
 - (ii) CEP has pursued and is pursuing such action with due diligence; and
 - (iii) CEP provided to OIG within that period a reasonable timetable for curing the material breach and CEP has followed the timetable.

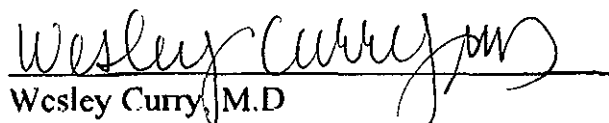
For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for the CEP, only after a DAB decision in favor of OIG. CEP's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude CEP upon the issuance of an ALJ's decision in favor of the OIG. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that CEP may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect twenty (20) days after the DAB decision.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, CEP and OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns, and transferees of CEP;
- B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;
- C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and
- D. The undersigned CEP signatory represents and warrants that he is authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.
- E. CEP acknowledges that it was represented by counsel during the negotiations of this CIA.

ON BEHALF OF CEP


Wesley Curry, M.D.
President
California Emergency Physicians

DATE

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**



LEWIS MORRIS

Assistant Inspector General for Legal Affairs

Office of Inspector General

U. S. Department of Health and Human Services

7/25/00
DATE